

E-FILED February 7, 2024

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**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA**

In re:  
  
DONALD SCOTT HERMAN,  
  
Debtor.

Bankruptcy Case No. 23-14385-mkn  
Adversary No. 23-01153-mkn  
Chapter 7

DONALD SCOTT HERMAN; GRASS  
VALLEY HOLDINGS, LLP, a limited  
liability partnership,

Hearing Date: February 21, 2024  
Hearing Time: 9:30 a.m.

Plaintiffs,

v.

SERVICES ONE, INC., d/b/a/ BSI  
FINANCIAL SERVICES, a Corporation;  
MTC FINANCIAL INC., d/b/a/ TRUSTEE  
CORPS., a Corporation; MORGAN  
STANLEY DEAN WITTER CREDIT  
CORPORATION, a Corporation; and  
EAGLE NEST TRUST #10530; TRINITY  
CAPITAL LLC., a Limited Liability  
Company,

Defendants.

**OPPOSITION TO MOTION TO DISMISS FILED BY SERVIS ONE, INC., d/b/a/ BSI  
FINANCIAL SERVICES**

COMES NOW, DONALD SCOTT HERMAN; GRASS VALLEY HOLDINGS, LLP, , by  
and through their attorney of record, MICHAEL J. HARKER ESQ., and hereby submits the  
underlying OPPOSITION TO MOTION TO DISMISS FILED BY SERVIS ONE, INC., d/b/a/ BSI  
FINANCIAL SERVICE. This Opposition is made and based on the points and authorities below, the

papers and pleadings on file herein, and any and all oral argument allowed by the Court at the time of hearing.

### FACTS

Defendant filed a Motion to Dismiss alleging that pursuant to F.R.C.P 12(b)(6), Plaintiff fails to state a claim upon which relief can be granted. The Defendant first sets forth the fact that GRASS VALLEY HOLDINGS, LLP, owns the property in question which is a defunct corporation and that therefore, based on the same, the underlying case cannot go forward.

Defendant furthermore sets forth the fact that Plaintiffs claims for sanctions cannot be sustained nor injunctive relief inasmuch as that is not a cause of action. Plaintiff would dispute the same but furthermore, has filed the underlying action to set aside the foreclosure sale as a violation of the automatic stay and that is the reason for the underlying Complaint.

### LAW

Rule 12(b)(6) of the Federal Rules of Civil Procedure mandates that a court dismiss a cause of action that fails to state a claim upon which relief can be granted. *See North Star Int'l v. Ariz. Corp. Comm'n*, 720 F.2d 578, 581 (9<sup>th</sup> Cir. 1983). When considering a motion to dismiss under Rule 12(b)(6) for failure to state a claim, dismissal is appropriate only when the Complaint does not give the defendant fair notice of a legally cognizable claim and the grounds on which it rests. *See Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). In considering whether the complaint is sufficient to state a claim, the Court will take all material allegations as true and construe them in the light most favorable to the plaintiff. *See NL Indus., Inc. v. Kaplan*, 792, F.2d 896, 898 (9<sup>th</sup> Cir. 1986).

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If the court grants a motion to dismiss, it must then decide whether to grant leave to amend. Pursuant to Rule 15(a), the court should “freely” give leave to amend “when justice so requires,” and in absence of a reason such as “undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of the amendment, etc.” *Foman v. Davis*, 371 U.S. 178, 182 (1962). Generally, leave to amend is only denied when it is clear that the deficiencies of the complaint cannot be cured by amendment. See *DeSoto v. Yellow Freight Sys., Inc.*, 957 F. 2d 655, 658 (9<sup>th</sup> Cir. 1992).

### ARGUMENT

Plaintiff clearly believes pursuant to F.R.C.P (12)(b)(6) that they have stated a claim for which relief can be granted. GRASS VALLEY HOLDINGS, LLP, has held ownership of the property since 2013 after being transferred from the HERMAN FAMILY TRUST. Said transfers are attached as “Exhibits 2 and 3” to Defendants Motion to Dismiss.

The issue here is whether the Plaintiff has the ability to bring the underlying action which clearly he believes he does. Plaintiff has lived in the property since approximately 2012. Plaintiff has had an ownership interest in the property since 2012. As set forth by the Plaintiff itself, Plaintiffs family trust owned the property and then he transferred it to GRASS VALLEY HOLDINGS, LLP, which he was the sole member of said Limited Partnership.

Additionally, Plaintiff will be able to prove that he sent numerous payments to the holder of the first Deed of Trust which were accepted until they weren’t. Notwithstanding, for purposes of the Motion to Dismiss, Plaintiff clearly has an ownership interest in the property and the Defendant is very well aware of the same. This is not the Plaintiffs first bankruptcy. Plaintiff filed a previous bankruptcy, case number 23-14385-mkn, with this Court which was dismissed for failure to make Plan payments. Notwithstanding, prior to dismissal, the Defendant in this case filed a proof of claim (See “Exhibit 1”). The Defendant clearly alleged monies due and owing from the Plaintiff. Why would a proof of claim be filed if monies were not due and owing?

1 More importantly, Plaintiff acknowledged his ownership interest in the property in both his  
2 previous bankruptcy and his current bankruptcy by alleging his ownership interest in GRASS  
3 VALLEY HOLDINGS, LLP,. Notwithstanding, said disclosures once again, Defendant having  
4 accepted payments and having acknowledged Plaintiffs ownership interest in the property, filed a  
5 proof of claim. Additionally, Defendant objected to the original Plan filed by Plaintiff (See “Exhibit  
6 2”).

7 All in all, it is far too early to dismiss the underlying action based on the representations of  
8 the Defendant that the relief sought cannot be had. Should the Court feel that the Plaintiff has not  
9 brought sufficient allegations, or properly plead the same, Plaintiff would then request that the Court  
10 allow an amendment of the Complaint to address these issuers. Having said that, Plaintiff clearly  
11 believes that he does have a cause of action, that he has alleged an ownership interest, that the  
12 Defendant has acknowledge said ownership interest, and therefore, violated the automatic stay by  
13 foreclosing on the property after the Plaintiff had filed the bankruptcy.

14 It was a second bankruptcy filed within a one year period and therefore, the automatic stay  
15 was only valid for one month. However, the Plaintiff filed a Motion to Extend the Automatic Stay  
16 which was granted by this Court. (See Docket #28). Therefore, the stay was in effect when the  
17 foreclosure occurred and the question is whether the stay should have stopped the foreclosure sale  
18 and clearly the answer to this question is yes. Plaintiff lived in the property, Plaintiff listed the  
19 property in both bankruptcies, listed as ownership interest in GRASS VALLEY HOLDINGS, LLP,  
20 and listed an equitable interest in the property in question.

21 Once again, Defendant knew the same by filing a Proof of Claim in the previous bankruptcy  
22 and objecting to the proposed Plan.

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**CONCLUSION**

Pursuant to the points and authorities above, Debtor requests that the Court deny the Motion to Dismiss.

Dated: February 7, 2024.

Respectfully submitted by,

/s/ Michael J. Harker  
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**CERTIFICATE OF SERVICE**

I hereby certify that I am an employee of MICHAEL J. HARKER, ESQ., and that on the 7<sup>th</sup> day of February, 2024, I caused the foregoing documents, entitled OPPOSITION TO MOTION TO DISMISS FILED BY SERVIS ONE, INC., d/b/a/ BSI FINANCIAL SERVICE to be served as follows:

- ☒ [ x ] by placing a copy of the same for mailing in the United States mail, with first class postage prepaid addressed to attached creditor matrix; and/or
- ☐ [ ] by causing a copy to be sent via facsimile at the number(s) listed below; and/or
- ☐ [ ] by hand delivering a copy to the party or parties as listed below:

/s/ Mandi Wonders  
**MANDI WONDERS**, Legal Assistant of  
Michael J. Harker, Esq.

NATHAN F. SMITH, #12642  
MALCOLM CISNEROS, A Law Corporation  
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